

## REMARKS

Applicants are in receipt of the Office Action mailed June 17, 2004. Claims 1, 3 – 18, and 20 were pending in the application. Claims 1, 3 – 18, and 20 remain pending in the application.

Claims 1, 3 – 13, 15, 18, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cabrera et al. (USPN 6,708,227, hereinafter “Cabrera”) in view of Cochran (USPN 6,718,447, hereinafter “Cochran(1)”), Cochran (USPN 6,721,902, hereinafter “Cochran(2)”), and the Principia Cybernetic Web internet web site as of February 2000 (hereinafter “PCW”). Claims 14, 16, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cabrera in view of Cochran(1), Cochran(2), and PCW, and in further view of Gregg (USPN 5,938,786).

Applicants can find no teaching or suggestion in Cabrera, Cochran(1), Cochran(2), or PCW, either separately or in combination, of a method comprising **“receiving, from the application programming interface, a freeze list with one or more freeze methods appropriate for freezing the storage object, wherein each freeze method includes a measure of quiesce strength,”** as recited in Applicants’ claim 1.

The Examiner asserts that “one skilled in the art would expect the potential for transactional inconsistency and deadlocks to be present in the system of Cabrera, and that such potential would depend upon the particular combination of service providers used in making the snapshot, thereby making the use of certain combinations more likely to result in undesired behavior.” Applicant respectfully disagrees, and requests that the Examiner either identify a reference to substantiate this assertion or withdraw the rejection.

The Examiner further asserts that it would have been obvious “to apply the decision theory of PCW, in the system made obvious by the combination of Cabrera and Cochran(1,2), such that the risk of transactional inconsistency and deadlocks associated with particular combinations of service providers used in making a snapshot is reflected in a quiesce strength

(i.e. risk ranking), in order to make an informed decision about which alternative to choose as taught by PCW.” Applicants respectfully remind the Examiner that there must be some suggestion or motivation to combine reference teachings to establish a *prima facie* case of obviousness. PCW provides a broad description of decision theory, including a value function that introduces an ordering on the set of consequences and thus ranks alternatives. However, Applicants can find no teaching or suggestion as to why or how a person of skill in the art would combine the broad field of decision theory as taught in PCW in any particular way with the teachings of Cabrera, Cochran(1) or Cochran(2).

Still further, the Examiner asserts that “it would have been obvious to provide such information as a return value from the API of Cabrera, as such teachings are well known in the art for the purpose of interaction between applications and underlying processes managed by an API, noting that the possible alternatives would comprise a list of snapshot methods.” Applicant again can find no teaching or suggestion in any of the cite art to support this assertion.


Accordingly, claim 1 along with its dependent claim 3 is believed to patentably distinguish over the cited references for at least the reason given above. In addition, claims 4, 7, 9, 11, 13, 16 and 18 recite features similar to those of claim 1, and are likewise believed to patentably distinguish over the cited references, along with their respective dependent claims, for at least the same reason.

## CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 50-1505/5760-17800/BNK.

Respectfully submitted,



B. Noël Kivlin  
Reg. No. 33,929  
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert and Goetzel, P.C.

P.O. Box 398

Austin, Texas 78767-0398

Phone: (512) 476-1400

Date: 9-15-04